IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 91 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

---

SAURASHTRA EDUCATION FOUNDATION

Versus

COMMISSIONER OF INCOME TAX

---

Appearance:

1. INCOME TAX REFERENCE No. 91 of 1987

MR SN SOPARKAR, Sr. Advocate with Mr MK Kazi and
MR TP HEMANI for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

---

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 04/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference under Section 256(1) at the instance of the assessee, the following question has been referred for our opinion for assessment year 1981-82:-

"Whether on the facts and in the circumstances of the case, the assessee would be entitled to exemption as contemplated under Section 10(22) of the Income-tax Act, 1961 ?"

2. The assessee is a trust registered a public charitable trust on 10.1.1978. When the trust was registered on 10.1.1978 its objects were as under:-

(a) To raise and/or improve the standard of education of the students and for this purpose to run, conduct and/or manage Bal Mandirs, Kindergartens, primary schools, colleges, degree courses, secondary schools, high schools, higher secondary schools, diploma courses, educational centres, libraries, reading rooms, and other institutions for imparting education.

(b) To arrange and/or organise meetings, lectures, workshop classes, weekend courses, exhibitions, seminars, symposium and conferences with a view to raise and/or improve the standard of education.

(c) To establish run, conduct and/or manage institutions for training of Teachers, Professors, Lecturers, Demonstrators, Tutors and other persons connected and or interested in raising and or improving the standard of education.

(d) To arrange for modern teaching aids, audio visual equipments, charts, slides, films etc. for imparting education and to make them available to various educational institutions.

(e) To promote, organise and coordinate research in education by providing college of education for B.Ed., M.Ed., Ph.D. etc. degrees, conduct intensive research projects and extensive surveys to provide effective extension programmes and consultative services to educational institutions.

(f) To provide for and/or arrange for counselling centre comprising of educational and vocational guidance bureau, educational and psychological testing services and child guidance clinic.

(g) To enter into any agreements or arrangements with any Government, Local Authority, Institution, Body of Individuals as may appear conductive to the objects of SEF and to carry out, exercise and comply with such agreements and arrangements.

(h) To print, publish, distribute or support any publications, periodic or not, for the promotion of the aforesaid objects of SEF.

(i) To do all such other things, either alone or in conjunction with others as are incidental or conducive to the attainment of the aforesaid objects or any of them of SEF.

Subsequently, to promote educational activities in the rural area, the following clause was added in the main objects clause:-

"To undertake, carry out, promote and sponsor any programme of rural development and of improvement of rural technology including training of persons for implementing programmes of rural development."

For achieving the aforesaid objects, the assessee conducted various classes for students of Standards X, XI and XII as also for CA Entrance Examination. It also held refresher courses for teachers teaching in various schools. It also held lectures, meetings, exhibitions and audio visual shows on relevant educational topics. In view of these activities, the assessee claimed exemption under Section 10(22) of the Income-tax Act, 1961 (hereinafter referred to as "the Act") on the ground that it was an educational institution existing solely for the purpose of education. For the assessment year under consideration, although the assessee was given the benefit of Section 11(1)(a), the ITO did not accept the assessee's claim for exemption under Section 10(22) on the ground that the expression "educational institution existing solely for education" in Section 10(22) of the Act must be given a narrow meaning than that given to the term "education" in Section 2(15) of the Act and that Section 10(22) only refers to formal education given in

schools and colleges and not to other forms of education which is for development, advancement and betterment of education. In appeal, the AAC held in favour of the assessee that education need not mean only formal education but it refers to various activities carried on to provide education through modern techniques including holding of exhibitions, audio visual shows etc. which is meant for students and teachers who are interested in the relevant fields. In appeal, at the instance of the revenue, the Tribunal held that the assessee was not entitled to the benefit of Section 10(22) of the Act and restored the order of the ITO. Hence, this reference at the instance of the assessee.

3. We have heard Mr SN Soparkar, learned counsel for the applicant-assessee and Mr Manish R Bhatt, learned Standing Counsel for the revenue.

4. Mr Soparkar has invited our attention to the findings given by the Appellate Assistant Commissioner and submitted that the Tribunal has erred in taking a very narrow definition of the expression "education". He submitted that though in Sole Trustee, Loka Shikshana Trust vs. CIT (1975) 101 ITR 234, the Apex Court gave illustrations to indicate that certain casual activities could not be termed as educational activities, the activities being carried on by the assessee are not such activities. The learned counsel referred to various letters and certificates issued by the institutions running schools, colleges and even Physical Research Laboratory at Ahmedabad, the Vikram Sarabhai Community Science Centre at Ahmedabad, Saurashtra University, Nehru Science Centre etc. and submitted that on perusal of those letters and certificates it is clear that the activities being run on by the assessee are intimately connected with formal education being imparted in schools and colleges.

Mr Soparkar further submitted as under :-

(i) When an assessee has been granted the benefit under Section 11(1)(a), there is no reason to justify denial of benefit under Section 10(22), as both the provisions deal with the same subject "education".

(ii) Reference is made by way an an illustration to the Institute of Chartered Accountants of India and it is submitted that earlier the institute was not running its own classes and that without any geographical proximity to the students it was imparting instructions through postal tuitions but its status as an educational

institution was never doubted. Similarly open universities also impart education without geographical proximity with the students.

(iii) Reliance is placed on the decision of this Court in Gujarat State Cooperative Union vs. Commissioner of Income-tax, (1992) 195 ITR 279, and it is submitted that advancement of knowledge brings within its fold suitable methods of its dissemination and though the primary method of sitting in a class-room may remain ideal for most of the initial education it may become necessary to have a different outlook for further education. It is not necessary to nail down the concept of education to a particular formula. Its progress lies in acceptance of new ideas and development of appropriate means to reach them to the recipients.

5. On the other hand, Mr Manish R Bhatt, learned Standing Counsel for the revenue has submitted that the Tribunal has applied the correct test laid down by the Apex Court in Sole Trustee, Loka Shikshana Trust vs. CIT (1975) 101 ITR 234 which has also been subsequently applied by this Court in CIT vs. Sorabji Nusserwanji Parekh, (1993) 201 ITR 939 and by the Patna High Court in Bihar Institute of Mining and Mine Surveying vs. CIT, (1994) 208 ITR 608.

6. Before considering the rival submissions, it is necessary to refer to the relevant statutory provisions in this behalf.

Chapter III of the Income-tax Act, 1961 specifies "Incomes which do not form part of total income". Section 10 commences with the heading "Incomes not included in total income", and the relevant clause reads as under:-

> 10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included -
>
> (1) ... ... ...
>
> .... .... ... ...
>
> (22) any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit.

This clause was omitted by Finance (No.2) Act,

1998 w.e.f. 1.4.1999 and the following relevant sub-clauses were added as parts of clause (23C) by the same Amendment Act:-

(23C) any income received by any person on behalf of -

(i) .. ... ......

... .... ... .....

(iiiab) any university or other educational institution existing solely for educational purposes and not for purpose of profit, and which is wholly or substantially financed by the Government; or

(iiiac) .. ... ....

(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed; or

.... .... ..... ....

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority, or

Section 11 commences with the heading, "Income from property held for charitable or religious purposes".

11(1). Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income -

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of

the income from such property.

The percentage 25 is now substituted by 15% by Finance Act, 2002 w.e.f. 1.4.2003.

The expression "charitable purposes" is defined by clause (15) in Section 2 as under:-

2(15) "charitable purpose" includes relief to the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit.

The words, "not involving the carrying on of any activity for profit" have been omitted by Finance Act, 1983 w.e.f. 1.4.1984.

7. A perusal of the aforesaid statutory provisions would show that while Section 11 provides for exemption of the income of a trust holding property wholly for charitable or religious purposes subject to certain conditions and the charitable purposes include education, Section 10(22) at the relevant time provided for total exemption to income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit. Two aspects stand out from clause (22) of Section 10.

The exemption is granted to the income of a university or other educational institution. The expression, "educational institution" would, therefore, take colour from the preceding word, "university". Noscitur a socci (a word is known by the company its keeps) is a well settled rule of interpretation of a statute. A university is admittedly an educational institution set up for imparting formal education. Hence, applying the aforesaid rule of interpretation the expression, "other educational institution" would mean an institution imparting formal education in an organised and systematic training where the institution would be accountable to some authority and where there would be teachers and taught the former having some degree of control over the latter.

8. It is significant to note that while a trust holding property for a charitable purpose of education as defined by Section 2(15) may also be an educational institution existing solely for the purpose of education, the two institutions cannot be treated as belonging to the same class. An institution may be carrying on educational activities as are being carried on by the assessee herein without imparting formal education and

without being affiliated to or accountable to any authority. Such a trust can certainly be considered as qualifying for exemption under Section 11(1)(a) read with Section 2(15), but the term "the educational institution" contemplated by Section 10(22) is a narrower concept. Though "educational institution" and the educational activities are closely interconnected; in Section 11(1)(a) read with Section 2(15) it is the activities which are in focus whereas in Section 10(22) both the institution and the activities are in focus. An educational institution under Section 10(22) is, therefore, more than a body carrying on charitable activities in the field of education as contemplated by Section 2(15).

9. Keeping the above analysis in mind and applying the aforesaid tests to the facts of the present case, it is obvious that the assessee would not satisfy the above tests. The assessee itself does not conduct any courses in formal education. It is true that the assessee carries on activities which are connected with formal education and which are quite laudable inasmuch as the assessee runs English improvement classes for Stds. X, XI and XII and also runs guidance classes for C.A. entrance examination; it also runs refresher course for English language teachers and guidance course for banking service recruitment; it screens educational films for the benefit of college and school students and organises lectures, and exhibitions on popular science, maths etc. and it also publishes and distributes booklets, but all these activities, though commendable, are piecemeal additions to courses of instructions being given in schools or colleges and universities. The assessee itself does not run any composite or integrated course of organised and systematic training. The assessee is not affiliated to, or registered by, any authority. The assessee does not claim any control over the recipients of training being given by the assessee.

10. As regards the illustration of the Institute of Chartered Accountants of India, although the Institute was earlier not running formal classes and there was no geographical proximity when instructions where being imparted through postal tuitions, the Institute of Chartered Accountants of India has always been an institution set up, inter-alia, for imparting formal education and for testing proficiency for entry to the profession of Chartered accounts. The Institute imparts formal education in accountancy and connected subjects in an organised and systematic manner. The Institute is accountable as per the provisions of the Act establishing it and the Institute also has disciplinary control over

the students who are required to be registered with it in the first place and who appear at the exams being held by the Institute. Hence, the example of the Institute of Chartered Accountants of India is not apposite and the assessee is not at all comparable to the said Institute. Similarly, open universities possess all the three indicia of an educational institution - imparting formal training, accountability to an authority and control over students. The assessee can not, therefore, compare itself with any open university either.

11. At this stage, we may refer to the decision of the Apex Court in Sole Trustee, Loka Shikshana Trust vs. CIT (1975) 101 ITR 234 wherein the Apex Court enunciated the following principles while interpreting the expression "education" in Section 2(15) of the Act:-

> "The sense in which the word "education" has been used in section 2(15) in the systematic instruction, schooling or training given to the young is preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge. Again, when you grow up and having dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of section 2. What education

> connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling."

12. Mr Soparkar for the assessee, however, vehemently submitted that the illustrations given by the Apex Court in the second part of the above paragraph referred to casual activities like travelling, reading newspapers and magazines, visiting art galleries, museums and zoos but merely because such activities are not being considered as educational activities, it does not mean that the activities being carried on by the assessee cannot be termed as educational activities. Mr Soparkar submitted that in between the formal schooling which is admittedly being considered by all as educational activity and the other casual activities referred to hereinabove, there is another category of activities which though not constituting formal schooling as such are very much connected with such formal schooling and filling the gaps in the present formal educational set-up. Mr Soparkar, therefore, submitted that the decision in Sole Trustee, Loka Shikshana Trust vs. CIT (1975) 101 ITR 234 does not rule out such activities as educational activities.

13. It is true that the various activities referred to in the above quoted paragraph in the decision of the Apex Court in Sole Trustee, Loka Shikshana Trust vs. CIT (supra) may be considered as casual activities and, that there may be certain activities which, though not casual activities described above, and though not a part of formal education as such, would have some relation to education and, therefore, a trust carrying on such activities may be classified as a trust holding property for charitable purpose which includes education as per Section 2(15) of the Act. Hence, there is nothing wrong with the assessee being recognised as a trust holding property for educational purposes. However, as indicated above, what Section 10(22) contemplates is an institution imparting formal education, which institution is accountable to some authority and has control over the taught.

14. Mr Soparkar has submitted that in Gujarat State Cooperative Union vs. CIT, 195 ITR 279, the institution was not any such school or college but was imparting education in cooperative field. The objects of the assessee in that case were to impart education to cooperative societies and to workers in the cooperative movement; to act as a coordinating agency on all matters pertaining to cooperative education and function as a

body of experts in matters relating to education etc.; to promote the study of problems connected with cooperation; to open circulating libraries, to publish periodicals, books, pamphlets, and literature in general on cooperation, rural development and allied subjects, to conduct training classes, training centres etc. and to run a printing press. Hence, if such activities could be considered as educational activities for the purpose of Section 10(22), the activities being carried on by the assessee in the instant case are also similar.

15. However, a close reading of the above judgment indicates that the Gujarat State Cooperative Union, the assessee in the above case, was carrying on the following activities as indicated on page 284 of the reports:-

| Activity | Duration |
|---|---|
| (i) Higher Diploma in Cooperation (condensed) | 18 weeks |
| (ii) Diploma in Land Development Banking | 12 weeks |
| (iii) Certificate Course in Cooperative Credit and Banking | 10 weeks |
| (iv) Specialised Short-term Courses/ Orientation courses | - |
| (v) Junior Basic Course for Diploma in Cooperation | 24 weeks |

The assessee therein was also conducting seminars and running four cooperative training centres which conduct Special Course for employees of Urban Cooperative Banks, District Cooperative Banks and Market Class, and also seminars. The assessee also conducted Cooperative Education Programme, Consumer Education Programmes (Project), Women Cooperative Education Programme, Special Training Classes in the District under Cooperative Education and Industrial Projects of the nature and duration as mentioned in the said list of its activities. The assessee therein was accordingly imparting formal education in the cooperative field.

It was in the context of the aforesaid activities that the Court held that the assessee was existing solely for educational purposes. It appears that the real controversy in that case was whether the revenue was

justified in contending that though some of the activities of the assessee were educational activities, there were other activities which were not educational and, therefore, the assessee was not existing solely for educational purposes. It was in the context of that controversy that the Court held that it cannot be doubted that the assessee was a society for diffusion of a certain branch of knowledge, namely, knowledge of the cooperative movement in various fields governing human life and the activities for the purpose were carried out in an organised and systematic manner by conducting regular courses for imparting instruction and training on various subjects included in the curricula as is reflected from the list of its activities. The Court also noted that the assessee was given financial assistance by the Government and the Government Resolutions indicated that the grants sanctioned by the Government were for educational purposes. This Court also referred to the above quoted observations of the Hon'ble Supreme Court in Loka Sikshana Trust's case (supra) and then further made the following observations:-

"The Supreme Court, in the above observations, by referring to the systematic instruction, schooling or training given to the young has only cited an instance in order to indicate as to what the word "education" appearing in section 2(15) of the Act which defines "charitable purposes" is intended to mean. We are certain that these observations were not intended to keep out of the meaning of the word "education", persons other than "young". The expression "schooling" also means "that schools, instructs or educates" (The Oxford English Dictionary, Vol.IX, page 217). The Supreme Court has observed that the word "education" also connotes the whole course of scholastic instruction which a person has received. This clearly indicates that the observations of the Supreme Court were not intended to give a narrow or pedantic sense to the word "education"."

While respectfully agreeing with the Division Bench that the word "education" is not confined to teaching the "young", even so, the Division Bench did not do away with the test of systematic instruction or training eveolved by the Supreme Court. Although the term "other educational institution" may not be confined only to schools or colleges, the expression does contemplate an institution imparting formal education or

training just as the Gujarat State Cooperative Union was conducting courses in various disciplines related to the cooperative movement.

16. Similar view was taken by this Court in Commissioner of Income-tax vs. Sorabji Nusserwanji Parekh, (1993) 201 ITR 939 where the assessee was a trust which was primarily founded to establish a school or college for imparting instructions to Zoroastrian students but it was not successful in establishing any such school or college and was giving scholarships to the needy Parsi students to enable them to pursue their educational activities. There the Court held that the assessee neither actually imparted any knowledge to the students nor did it keep any control over such students. Therefore, it cannot be said that the trust was carrying on educational activities or that it was an educational institution established for educational purposes. It, therefore, appears that this Court did lay down control over the taught as one of the tests for deciding whether the institution was an educational institution.

Applying the aforesaid test also, it is clear that although the activities of the assessee are connected with formal education being given by other institutions running schools and colleges, the assessee itself does not have or exercise any control over the students who get the benefit of the activities being carried on by the assessee.

17. In Bihar Institute of Mining and Mine Surveying vs. CIT, (1994) 208 ITR 608 also, Hon'ble Mr Justice SB Sinha speaking for the Division Bench of the Patna High Court (as His Lordship then was) has taken the view that where the principal project of the assessee institution running private tuition classes was the object of coaching and preparing the students for appearing in various examinations, it is not an institution for imparting of education and, therefore, cannot be said to be an educational institution.

18. In view of the above discussion, we are of the view that the Tribunal was right in holding that the assessee was not an educational institution established solely for educational purposes and was, therefore, not entitled to exemption as contemplated under Section 10(22) of the Income-tax Act.

We accordingly answer the question in the negative i.e. in favour of the revenue and against the assessee.

19. At this stage, Mr Soparkar submits that since the reference pertains to the assessment year 1981-82 and, therefore, the Tribunal's decision as well as our opinion are given in the context of the activities which were then being carried on by the assessee, the opinion for the said assessment year may not be treated as binding for any subsequent year when the assessee may commence other activities which may qualify the assessee for exemption under Section 10(22)/10(23C), as the case may be.

We, therefore, clarify that our opinion for assessment year 1981-82 is rendered in the context of the activities which were then being carried on by the assessee.

20. The Reference accordingly stands disposed of.

21. At this stage, Mr Soparkar, learned counsel for the assessee prays for a certificate under Section 261 of the Income-tax Act, 1961 for appealing against this decision to the Hon'ble Supreme Court.

Although what we have done is following the decision of the Apex Court in Sole Trustee, Loka Shikshana Trust vs. CIT, (1975) 101 ITR 234, we do feel that having regard to the emerging trends and the modern means of teaching and the growing importance of the institutions other than those engaged in formal teaching, this is a fit case for appeal to the Hon'ble Supreme Court. We certify accordingly.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)

zgs/-